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DEPARTMENT OF STATE

ACTION MEMORANDUM

SEP 21 1983

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EA
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RF(JAB)

TO: The Acting Secretary

THROUGH: E - Mr. Cooper

FROM: EB - Deane R. Hinton
HA - Patt Derian
S/P - Anthony Lake
EA - Richard Holbrooke

SUBJECT: Eximbank, Human Rights, and Korea

SUMMARY: Our bureaus disagree [redacted] new preliminary commitments for Eximbank credits to public entities in Korea. The issue arose when the Eximbank asked clearance for two preliminary commitments for loans (one for $325 million, the other for $8.5 million) to finance partially US firms' participation in the Seoul subway project.

[redacted]

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DEPARTMENT OF STATE A/GIS/IPR
REVIEWED BY: R. Valen DATE: 12/23/83
DECLASSIFIED ☐ RELEASABLE ☐
RELEASE DENIED ☒ in part
PA or FOI EXEMPTIONS 552(b)(1), (5)

[redacted]

ANALYSIS OF THE ISSUES

Under the Export-Import Bank Act of 1945 as amended in 1978, applications for Exim credit may be denied if the President determines "...that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as ...human rights..." Section 2(b) (1) (B) of the Export-Import Bank Act of 1945, as amended. The President's power to make the required determination under the Act was delegated to the Secretary of State, who must first "consult with the Secretary of Commerce and the heads of other interested Executive Agencies." Executive Order 12166, October 19, 1979, 15 Weekly Digest of Presidential Documents (October 22, 1979), at p. 1965.

Thus, the determination must include two elements:

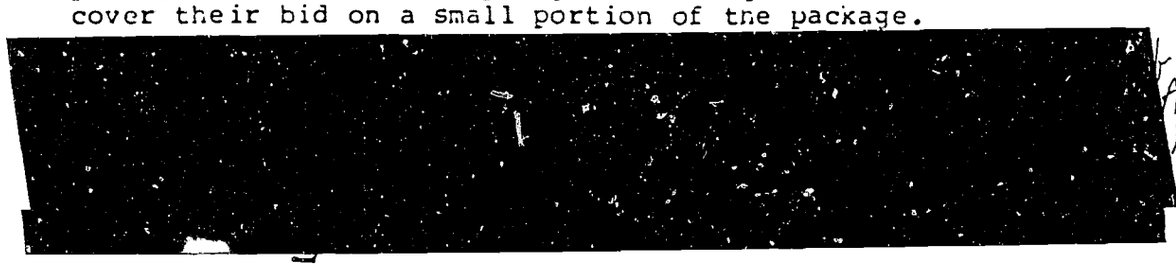
1. That the denial would "clearly and importantly advance US policy" in the human rights area; and

2. That denial would be "in the national interest."

Since the Eximbank legislation concerning human rights was revised by the Chafee Amendment in 1978, the Department has not refused clearance for any Eximbank projects on human rights grounds. A general prohibition on all Eximbank activity in Chile in response to the Letellier/Moffitt case is the only example of restrictions on Eximbank activities for noncommercial or nonfinancial reasons. With regard to South Africa, however, there is special legislation restricting Eximbank loans on human rights grounds, with especially stringent provisions applying to "support of any export to the Government of the Republic of South Africa or its agencies". The President has delegated to the Secretary of State the authority to make determinations under the Chafee amendment.

The Eximbank routinely asks the Department of State for political and human rights clearance before the Bank's Board of Directors considers any credit application. EB coordinates the Department response to Eximbank. The relevant regional bureau desk officer must concur in the political clearance. The HA bureau must sign a human rights clearance.

On September 4 Eximbank submitted requests for clearance for two US bids related to the Seoul Metro project. A Westinghouse led consortium requests a $325 million Eximbank credit to support their bid for the entire communications and electronics package. General Railway Signal has requested $8.5 million to cover their bid on a small portion of the package.



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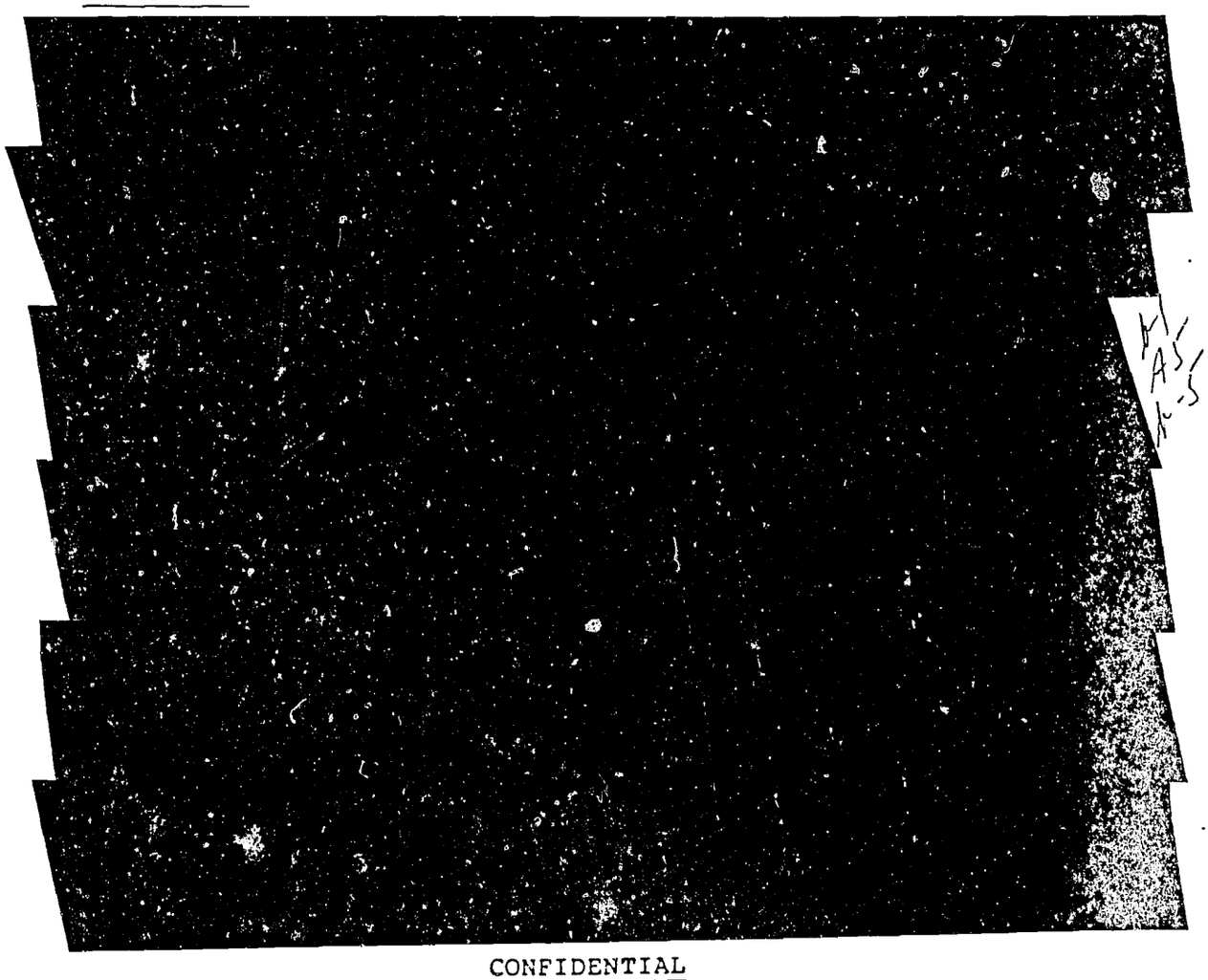
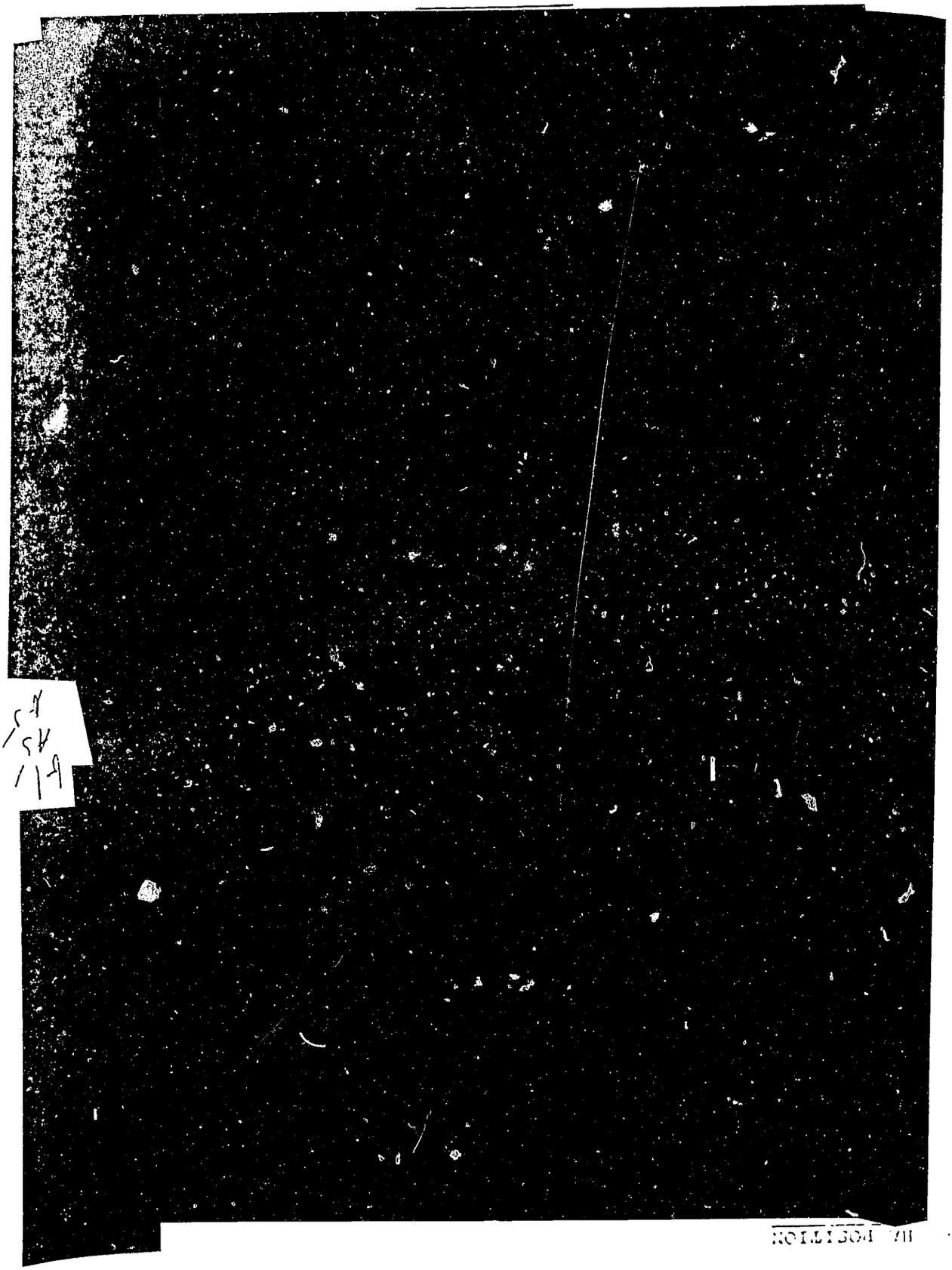
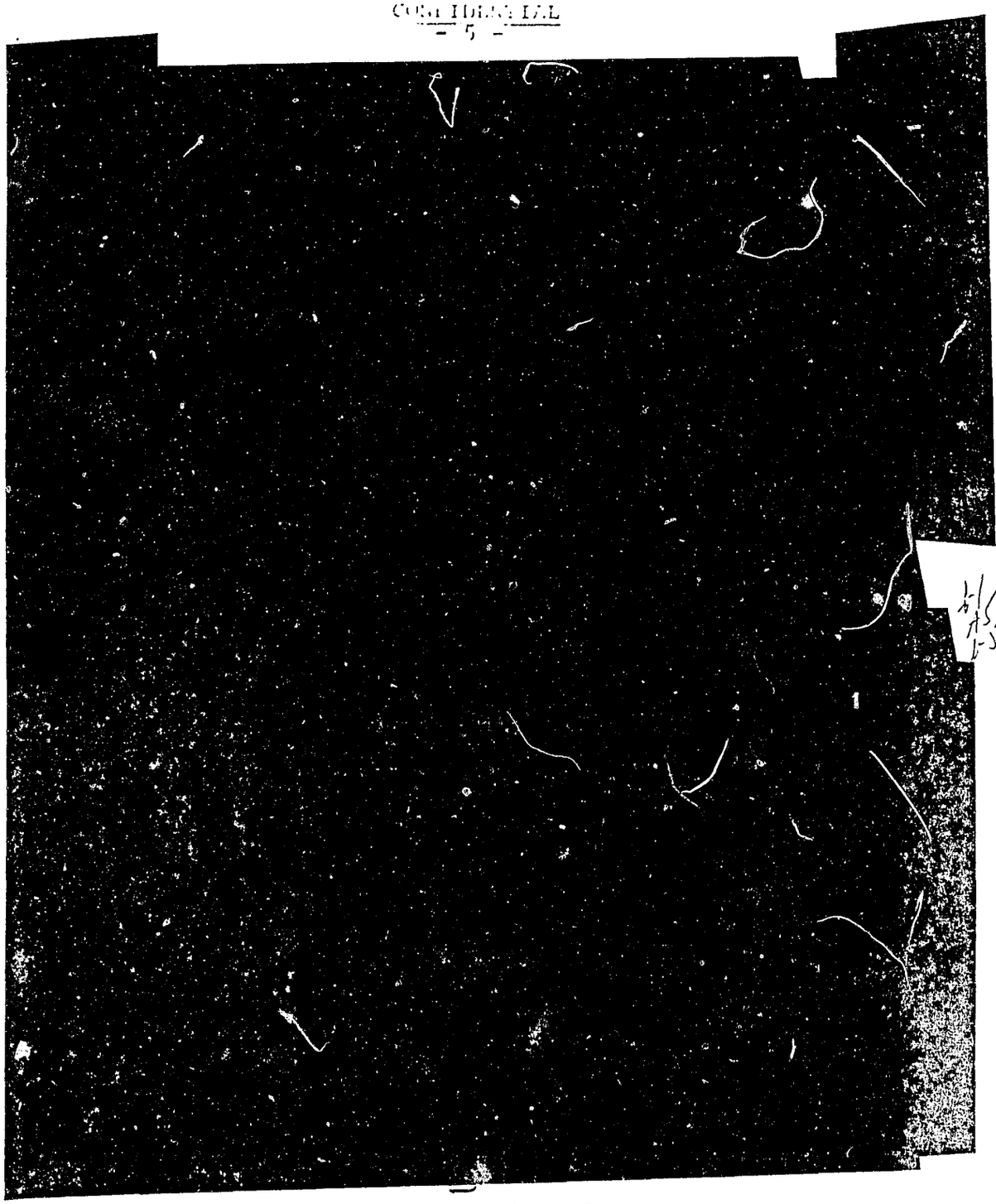
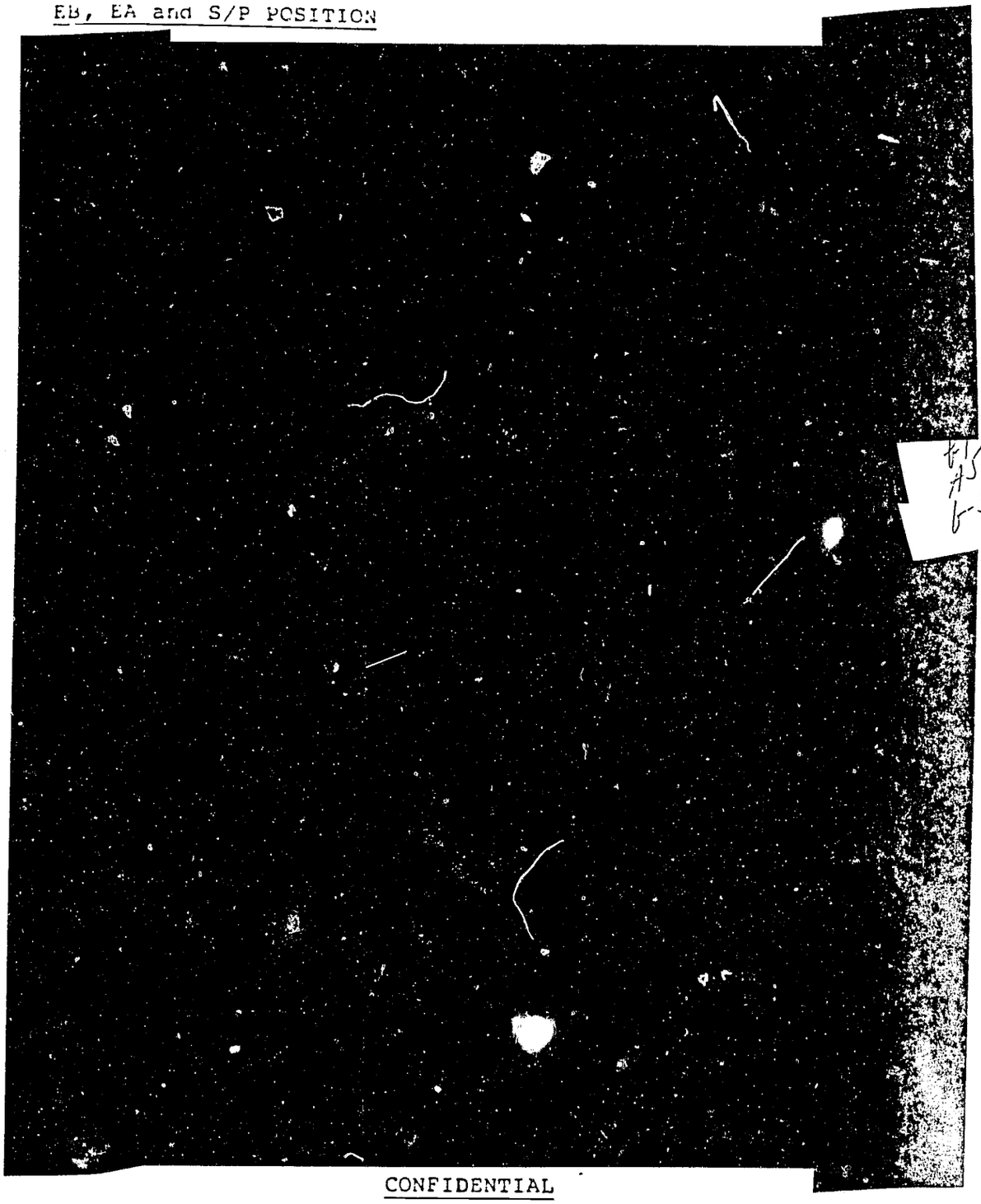


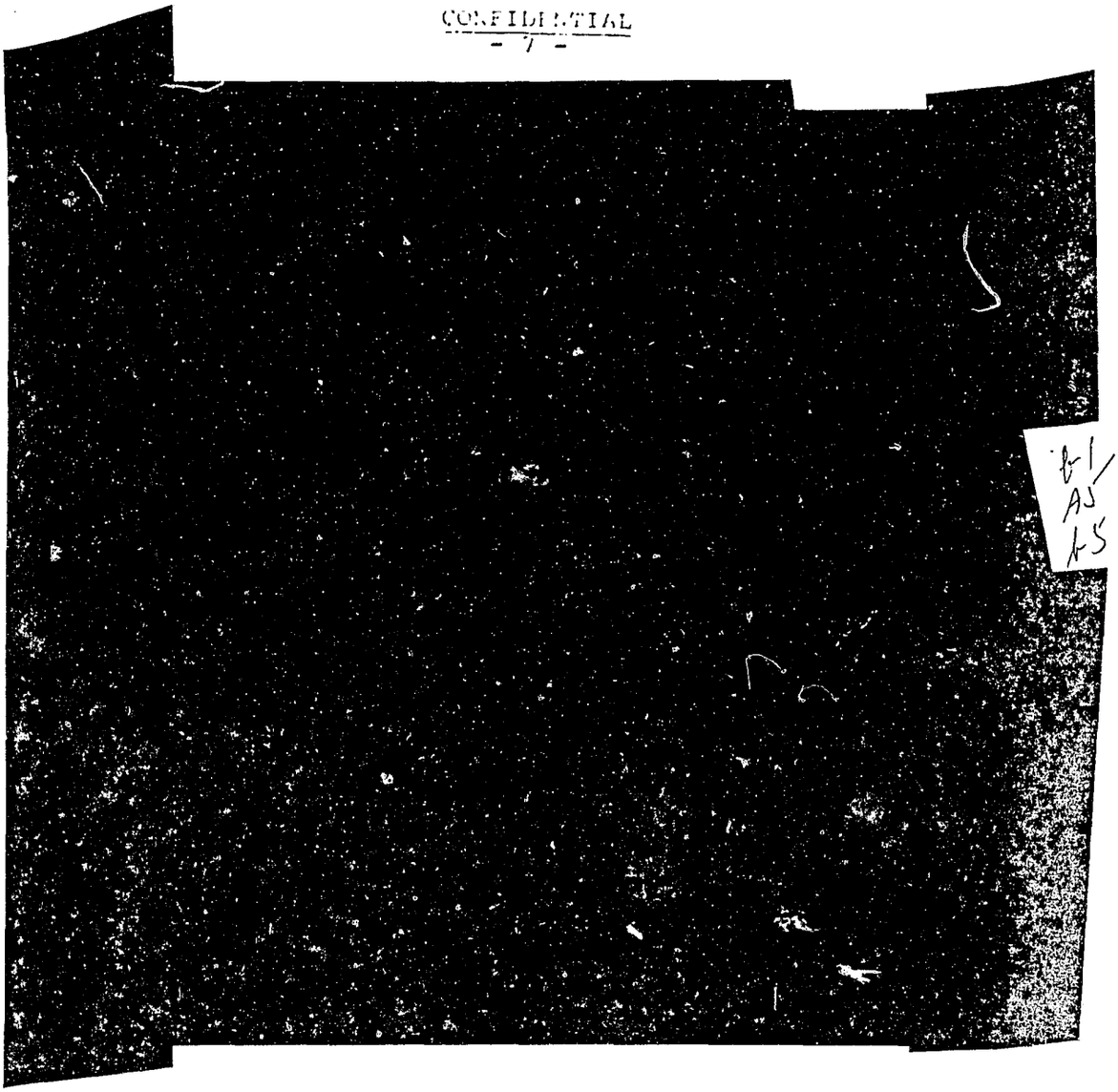




Since there has been no review of the whole range of possible Exim applications for Korean transactions, and because the test postulated in Option 2, "effective way to deal with the situation," seems not to be in line with the Exim statute's prescribed test (see the discussion of the statute above), EA would recommend Option 3 should Option 1 not be approved.

EB, EA and S/P POSITION





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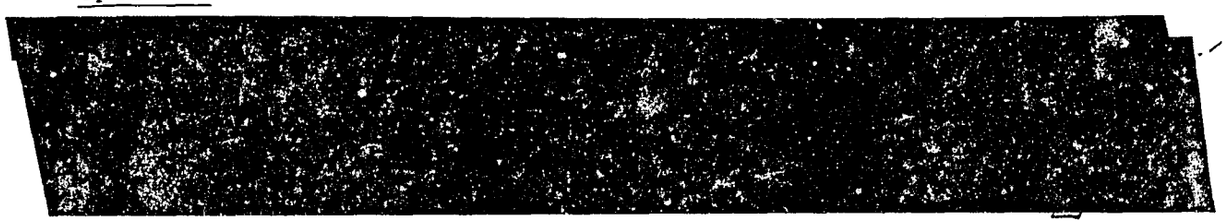
OPTIONS:

Option 1

Option 2



Option 3

That the Department inform Eximbank that it has no objection to these new preliminary commitments for these two loans, at this time. (HA's alternative preference)

Approve ✓ WE 22 SEP Disapprove _____

Drafted:EB/IFD/ODF:SEDonnelly:kj
9/18/80 21243/22126 105A15
HA/HR:MBache/TTull
L/HA:CRunyon

Clearances: EB/IFD/ODF:EGConstable
EA/K:RRich
L:WTLake (substance)
S/P:JWalker